IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.108 OF 2006

Mr. Hiralal Ramvilas Kalya ...Applicant.

V/s

The State of Maharashtra
and anr. ...Respondents.

ALONG WITH
CRIMINAL APPLICATION NO.268 OF 2006

Mr. Govind Ramvilas Kalya ...Applicant.

V/s

The State of Maharashtra ...Respondent.

Mr. Sachin Manale for the applicant in both the above applications.

Mr. Y.S. Shinde, APP for the State in both the above applications.

CORAM: V.M. KANADE, J.

DATE: 13th February, 2006

P.C.:

1. Both the applicants in the above applications have an apprehension that they are likely to be arrested in connection with the offence which is registered at the Alibag Police Station vide C.R. No. 82 of 2005, punishable under section 407 of the Indian Penal Code.

2. It is alleged by the complainant that the applicant - Hiralal's brother Govind is the owner of

the truck and he was given contract for delivery of 500 Fertilisers Gunny Bags from Alibag to Nijamabad. It is alleged that out of the said 500 bags, 91 bags were misappropriated on its way to Nijamabad and, therefore, a complaint was registered at Alibag Police Station. During the investigation, it transpired that the said truck stopped at the godown of the applicant - Hiralal and the said bags were delivered to him. The applicant - Hiralal is the brother of the owner of the truck and it is alleged that these 91 bags were misappropriated with the connivance of the said truck owner.

3. The learned Counsel appearing on behalf of the applicant - Hiralal Kalya submitted that the applicant has nothing to do with the said transaction and that applicant was willing to deposit an amount of Rs 34,000/- which was a book value of the said 91 bags and accordingly the said amount has been deposited in this Court. He submitted that the accused and the driver of the said truck had already been arrested by the police and that the investigation had been completed and that it was not necessary to have custodial interrogation of the applicant. He submitted that so far as the applicant - Govind Ramvilas Kalya is concerned, his name is not mentioned

in the FIR. He submitted that the investigation had been completed. He further submitted that the truck which was seized had already been returned.

4. The learned APP appearing for the State, however, vehemently opposed the said applications for bail. He submitted that the bags in question were fertilisers which were to be sent to the consignee in Andra Pradesh. He submitted that the said bags were essential commodities within the meaning of the Essential Commodities Act and, therefore, the applicants had also committed an offence punishable under the Essential Commodities Act.

5. In my view, the applicants have not made out a case for an anticipatory bail. The gunny bags which were to be transported were essential commodities and the Government had granted subsidy to the Company. The material indicates that the applicants diverted the essential commodities to Latur instead of delivering the same to the consignee. This is, therefore, merely not a case of breach of contract for delivery of the goods and, therefore, this is not a fit case for grant of an anticipatory bail. The application for bail is, therefore, rejected. The amount deposited by the applicant - Hiralal may be

allowed to be withdrawn in favour of the applicant.

6. It is clarified that merely because the application for anticipatory bail is rejected, that may not to be treated as an expression of opinion on merits of the case and if an application for bail is filed the same may be decided expeditiously on merits.

7. Applications are accordingly disposed of.

V.M. KANADE, J.